

**Internal Revenue Service**

**Department of the Treasury**

District  
Director

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

**JUN 4 1991**

CERTIFIED MAIL

Dear Applicant:

We have considered your application for exemption from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

The information shows that you were incorporated under the laws of the [REDACTED] on [REDACTED].

You indicate your purposes are to teach, demonstrate, market and further promote and develop the visual and decorative arts and crafts.

The activities of the organization consist of providing a building for the exhibition and sale of artists' works. You also conduct art classes and special events. Working members of the organization conduct all of these activities.

Your income is derived from membership dues, exhibition space rental, commissions from artwork sold, fees for art classes. Expenditures consist of rent, insurance, supplies, professional fees and other miscellaneous expenses.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations that are organized and operated exclusively for charitable, educational and other specified purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)1 of the Income Tax Regulations states that in order to be exempt as an organization described in section 501(c)(3) an organization must be both organized and operated for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test it is not exempt.

Section 1.501(c)(3)-1(b) states, in part, that an organization is organized exclusively for one or more exempt purposes only if its articles limit the purposes to one or more such exempt purposes and do not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of exempt purposes. Articles which expressly empower the organization to engage in other than exempt activities, and other than as an insubstantial part of activities is not organized exclusively for exempt purposes even if the articles stated the organization is created for charitable or educational or other exempt purposes.

Section 1.501(c)(3)-1(c)1 of the Income Tax Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which further one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It is necessary that it is not organized or operated for the benefit of private interests.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization may be exempt although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513 of the Code.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945), the Supreme Court of the United States held that a better business bureau was not exclusively educational since its activities were aimed in part at promoting the prosperity and standing of the business community, and that a single non-exempt purpose, if substantial in nature, is sufficient to preclude exemption under 501(c)(3) regardless of the number of educational activities.

Revenue 66-178, Cumulative Bulletin 1966-1, page 138 held that sponsoring art exhibits was an educational pursuit when an organization exhibited works of unknown artists to the public. There was no selling at the exhibits. Membership in the organization is not required to exhibit.

Revenue Ruling 71-395, Cumulative Bulletin, 1971-2, page 228, describes a cooperative art gallery formed and operated by a group of member artists for the purpose of exhibiting and selling the members' works of art. The gallery was open six days of the week and a commission on sales was retained to cover costs of the operation. This gallery was held not to be exempt as it served the private purposes of its members, even though the exhibition and sale of paintings might have been educational activities in other respects.

Revenue Ruling 76-152, found in Cumulative Bulletin 1976-1, on page 152, held that a nonprofit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than customary commercial charges and not sufficient to cover the cost of operating the gallery, does not qualify for exemption under 501(c)(3) of the Code.

Revenue Ruling 68-581, 1968-2 C.B. 250, held that sales by a vocational school of articles made by local residents independent of any instructional or other exempt function, and not in furtherance of any program to provide markets for needy individuals who are not otherwise able to support themselves, is unrelated trade or business as defined in section 513 of the Code, and is not an exempt function.

Membership is required to exhibit art in your gallery and the exhibits are for sale. Your member artists select the work they want exhibited/sold, establish the selling price and receive payment for art sold, less your commission.

Your classes will be offered on a regular basis, open to all members of the community. Teachers may be drawn from the membership or from the community. Of the class fee, [REDACTED] percent will be paid to the teacher; [REDACTED] percent will be retained by the corporation to cover expenses.

→ Your gallery exhibits are similar to the case considered in Revenue Ruling 71-395, held to be operated for the private benefit of its members. Membership is required to exhibit and sales are conducted.

It has not been shown that your sales or other operations are to provide markets for needy individuals otherwise unable to support themselves, as in Revenue Ruling 68-581.

Based on the information furnished, we hold that you are not operated exclusively for charitable, educational or other exempt purposes, since your operations provide more than an insubstantial private and economic benefit to your members. We also find that you are not organized exclusively for charitable and educational purposes since your purposes include "to market visual and decorative arts and crafts" and this serves a substantial private purpose and is not charitable or educational.

Since you are neither organized nor operated exclusively for purposes specified in section 501(c)(3), you are not exempt under section 501(c)(3) of the Code.

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file federal income tax returns on Form 1120.

[REDACTED]

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if your request, at any mutually convenient district office.

If we do not hear from you within 30 days of the date of this letter, this determination will become final. A copy of this letter will then be furnished to the appropriate State officials as provided by section 6104(c) of the Code.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted all administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

[REDACTED]  
District Director

Enclosure: Publication 892

cc: [REDACTED]